

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:)	SETTLEMENT AGREEMENT
)	FOR RECOVERY OF PAST
Digital Equipment Corp. Site a/k/a)	RESPONSE COSTS
PCB Horizon Site)	
San German, Puerto Rico)	U.S. EPA Region 2
)	CERCLA-02-2012-2021
)	
Puerto Rico Industrial Development Company)	PROCEEDING UNDER SECTION
SETTLING PARTY)	122(h)(1) OF CERCLA
)	42 U.S.C. § 9622(h)(1)

CERCLA SECTION 122(h)(1) SETTLEMENT AGREEMENT
FOR RECOVERY OF PAST RESPONSE COSTS

I. JURISDICTION

1. This Settlement Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D and redelegated to the Division Director of the Emergency and Remedial Response Division ("ERRD") in Region 2 on November 23, 2004.

2. This Settlement Agreement is made and entered into by EPA and the Puerto Rico Industrial Development Corporation ("Pridco" or "Settling Party"). The Settling Party consents to and will not contest EPA's authority to enter into this Settlement Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Settlement Agreement concerns the Digital Equipment Corp. Site also known as the PCB Horizon Site ("Site") located in San German, Puerto Rico. EPA alleges that the Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook actions at the Site starting in or about January 2008 pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604. Pridco also began to implement measures to remove hazardous substances from the Site before entering into an agreement with EPA to perform a removal action. At the time of EPA's involvement, Pridco reported that it had: (i) already sought and obtained an injunction order against PCB Horizon Technology to conduct removal activities or reimburse Pridco for said work; (ii) prepared a detailed inventory of the

hundreds of containers abandoned at the Site and a work and sampling plan for the proper characterization and disposal of the abandoned containers, and (iii) was in the process of working on a health and safety plan, all of which were provided to EPA for its comments once EPA became involved.

5. On July 29, 2008, EPA and Pridco entered into an Administrative Settlement Agreement and Order on Consent for Removal Action ("2008 Agreement") for the Site pursuant to Sections 106 and 122 of CERCLA, 42 U.S.C. §§ 9606 and 9622.

6. On or about October 31, 2009, Pridco completed the removal work under the 2008 Agreement at a cost it represents to have been in excess of \$2 million, and on or about September 19, 2011, Pridco paid EPA's oversight response costs, as required under the 2008 Agreement, in the amount of \$124,611.65 for, *inter alia*, overseeing activities performed under the 2008 Agreement during the period of August 1, 2008 through October 31, 2009. Consequently, the work required under the 2008 Agreement has been satisfactorily completed, and the 2008 Agreement has been terminated.

7. Subsequently, EPA sought the response costs that it incurred performing response activities at the Site both before the Parties entered into the 2008 Agreement and after its completion.

8. EPA alleges that Settling Party is a responsible party pursuant to Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1), because it is the owner of the facility and is jointly and severally liable for response costs incurred or to be incurred at or in connection with the Site.

9. EPA has determined that the total past and projected response costs of the United States at or in connection with the Site will not exceed \$500,000, excluding interest.

10. EPA and Settling Party recognize that this Settlement Agreement for oversight response costs incurred by EPA both before the parties entered into the 2008 Agreement and subsequent to the completion of the work under the 2008 Agreement has been negotiated in good faith and that this Settlement Agreement is entered into without the admission or adjudication of any issue of fact or law, specifically that Settling Party does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the facts or allegations contained in this Section of this Settlement Agreement.

III. PARTIES BOUND

11. This Settlement Agreement shall be binding upon EPA and Settling Party and its successors and assigns. Any change in ownership or corporate or other legal status of Settling Party, including but not limited to any transfer of assets or real or personal property, shall in no way alter Settling Party's responsibilities under this Settlement Agreement. The signatory to this Settlement Agreement certifies that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to bind legally the party represented by him or her.

IV. DEFINITIONS

12. Unless otherwise expressly provided in this Settlement Agreement, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or its appendices, the following definitions shall apply:

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

"Day" or "day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal or Commonwealth holiday, the period shall run until the close of business of the next working day.

"Effective Date" shall mean the effective date of this Settlement Agreement as provided by Section XV.

"EPA" shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

"EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

"Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

"Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral or an upper or lower case letter.

"Parties" shall mean EPA and Settling Party.

"Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA has paid at or in connection with the Digital Equipment Corp. property Site through the Effective Date of this Settlement Agreement, plus accrued Interest on all such costs through such date.

"RCRA" shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

"Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

"Settlement Agreement" shall mean this settlement document, Docket Number: CERCLA-02-2012-2021.

"Settling Party" shall mean Pridco.

"Site" shall mean the Digital Equipment Corp. property, also known as the PCB Horizon Site, which is comprised of a large parcel of real property and a building of about 196,000 square feet located in the Bo Guama Industrial Park in San German, Puerto Rico. The Bo Guama Industrial Park is considered to be part of the San German Ground Water Contamination Site.

"United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

V. PAYMENT OF RESPONSE COSTS

13. Payment by Settling Party for Past Response Costs. Settling Party shall pay a total of \$50,000.00 to EPA, divided into two equal payments, in accordance with the schedule set forth below, in full satisfaction of EPA's claim for Past Response Costs. Within five business days after Settling Party receives notice from EPA that this Settlement Agreement has been signed by EPA, Settling Party shall deposit its first payment of \$25,000.00 into an interest-bearing escrow account in a duly chartered bank or trust company that is insured by the Federal Deposit Insurance Corporation. If the Settlement Agreement is not made effective after public comment, the monies placed in escrow, together with accrued interest thereon, shall be returned to Settling Party. If the Settlement Agreement is made effective after public comment, Settling Party shall, within 15 days thereafter, cause the monies in the Escrow Account to be paid to EPA in accordance with Paragraphs 14 and 15 below. Settling Party shall make its second payment of \$25,000.00 by Fedwire Electronic Funds Transfer ("EFT") to EPA 180 days after the effective date of this Settlement Agreement in accordance with Paragraphs 14 and 15 below.

14. Payments to EPA by Settling Party shall reference Site/Spill ID Number 02-C5 and the EPA docket number for this action (CERCLA-02-2012-2021) and shall be made by EFT to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

15. At the time of any payment, Settling Party shall send notice that payment has been made to EPA in accordance with Section XII, and to the EPA Cincinnati Finance Office by email at acctsreceivable.cinwd@epa.gov, or by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

Beverly Kolenberg, Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 17th Floor
New York, New York 10007-1866
kolenberg.beverly@epa.gov

Irmgard Lopez, On-Scene Coordinator
U.S. Environmental Protection Agency, Region 2
Removal Action Branch
2890 Woodbridge Avenue
Edison, New Jersey 08837
lopez.irmgard@epa.gov

Such notice shall reference Site/Spill ID Number 02-C5 and the EPA docket number (CERCLA-02-2012-2021) for this action.

16. The total amount to be paid pursuant to Paragraph 13 shall be deposited by EPA in the Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site. The total amount to be paid by Settling Party pursuant to Paragraph 13 shall be deposited in the Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site or to be transferred by EPA to the EPA Hazardous Substance Superfund.

VI. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT

17. Interest on Late Payments. If Settling Party fails to make any payment required by Paragraph 13 by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

18. Stipulated Penalty.

a. If any amounts due to EPA under Paragraph 13 (Payment by Settling Party for Past Response Costs) are not paid by the required date, Settling Party shall be in violation of this Settlement Agreement and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 17, \$250.00 per day for each day that such payment is late.

b. Stipulated penalties are due and payable within 30 days after the date of demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties," shall reference Site/Spill ID Number 02-C5 and the EPA docket number for this action (CERCLA-02-2012-2021), and shall be made by EFT to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"

c. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Party of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing in this Settlement Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

19. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to EPA by virtue of Settling Party's failure to comply with the requirements of this Settlement Agreement, if Settling Party fails or refuses to comply with the requirements of this Settlement Agreement, it shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States, on behalf of EPA, brings an action to enforce this Settlement Agreement, Settling Party shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

20. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Settlement Agreement. Payment of stipulated penalties shall not excuse Settling Party from payment as required by Section V of this Settlement Agreement or from performance of any other requirements of this Settlement Agreement.

VII. COVENANTS BY EPA

21. Covenants for Settling Party by EPA. Except as specifically provided in Section VIII (Reservations of Rights by EPA), EPA covenants not to sue or take administrative action against Settling Party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. These covenants shall take effect upon receipt by EPA of the first payment required by Paragraph 13 (Payment by Settling Party for Past Response Costs) and any Interest or stipulated penalties due thereon under Paragraph 17 (Interest on Late Payments) or 18 (Stipulated Penalty). These covenants are conditioned upon the satisfactory performance by Settling Party of its obligations under this Settlement Agreement. These covenants extend only to Settling Party and do not extend to any other person.

VIII. RESERVATIONS OF RIGHTS BY EPA

22. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Settling Party with respect to all matters not expressly included within the Covenants for

Settling Party by EPA in Paragraph 21. Notwithstanding any other provision of this Settlement Agreement, EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Settling Party with respect to:

- a. liability for failure of Settling Party to meet a requirement of this Settlement Agreement;
- b. liability for any costs which may be incurred by the United States that are not within the definition of Past Response Costs;
- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
- d. criminal liability; and
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

23. Nothing in this Settlement Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, that the United States may have against any person, firm, corporation or other entity not a signatory to this Settlement Agreement.

IX. COVENANTS BY SETTLING PARTY

24. Covenants by Settling Party. Settling Party covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Past Response Costs and this Settlement Agreement, including but not limited to:

- a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claims arising out of the response actions at the Site for which the Past Response Costs were incurred, including any claim under the United States Constitution, the Constitution of the Commonwealth of Puerto Rico, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; and
- c. any claim pursuant to Section 107 or 113 of CERCLA, 42 U.S.C. § 9607 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or Commonwealth law for Past Response Costs.

25. Nothing in this Settlement Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

X. EFFECT OF SETTLEMENT/CONTRIBUTION

26. Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Except as provided in Section IX (Covenants by Settling Party), Settling Party expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Sections 113(f)(2) and (2) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and (3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to CERCLA 113(f)(2).

27. The Parties agree that the actions undertaken by Settling Party in accordance with this Settlement Agreement do not constitute an admission of any liability by Settling Party. Settling Party does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the facts or allegations contained in Section II of this Settlement Agreement.

28. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and that Settling Party is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), or as may be otherwise provided by law, for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are Past Response Costs. The Parties further agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Settling Party has, as of the Effective Date, resolved liability to the United States for the Past Response Costs.

29. Settling Party shall, with respect to any suit or claim brought by it for matters related to this Settlement Agreement, notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Settling Party also shall, with respect to any suit or claim brought against it for matters related to this Settlement Agreement, notify EPA in writing within 10 days after service of the complaint or claim upon it. In addition, Settling Party shall notify EPA within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.

30. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Party shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant by EPA set forth in Section VII.

31. Effective upon signature of this Settlement Agreement by Settling Party, Settling Party agrees that the time period commencing on the date of its signature and ending on the date EPA receives from Settling Party the final payment required by Section V (Payment of Response Costs) and, if any, Section VI (Failure to Comply with Settlement Agreement) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the "matters addressed" as defined in Paragraph 28, and that, in any action brought by the United States related to the "matters addressed," Settling Party will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If EPA gives notice to Settling Party that it will not make this Settlement Agreement effective, the statute of limitations shall begin to run again commencing 90 days after the date such notice is sent by EPA.

XI. RETENTION OF RECORDS

32. Until six years after the Effective Date, Settling Party shall preserve and retain all non-identical copies of records, reports, or information (hereinafter referred to as "Records") (including records in electronic form) now in its possession or control, or that come into its possession or control, that relate in any manner to response actions taken at the Site or to the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

33. After the conclusion of the six-year document retention period in the preceding Paragraph, Settling Party shall notify EPA at least 90 days prior to the destruction of any such Records and, if requested by EPA, Settling Party shall deliver any such Records to EPA. Settling Party may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Party asserts such a privilege, it shall provide EPA with the following: (1) the title of the Record; (2) the date of the Record; (3) the name, title, affiliation (e.g., company or firm), and address of the author of the Record; (4) the name and title of each addressee and recipient; (5) a description of the subject of the Record; and (6) the privilege asserted. If a claim of privilege applies only to a portion of a Record, the Record shall be provided to EPA in redacted form to mask the privileged information only. Settling Party shall retain all Records that it claims to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Party's favor.

34. Settling Party certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records relating to its potential liability regarding the Site since the earlier of notification of potential liability by the United States or the Commonwealth or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XII. NOTICES AND SUBMISSIONS

35. Whenever, under the terms of this Settlement Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or its successors give notice of a change to the other Party in writing. Written notice as specified in this Section shall constitute complete satisfaction of any written notice requirement of this Settlement Agreement with respect to EPA and Settling Party.

As to EPA:

Beverly Kolenberg, Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 17th Floor
New York, New York 10007-1866
kolenberg.beverly@epa.gov

Irmgard Lopez, On-Scene Coordinator
U.S. Environmental Protection Agency, Region 2
Removal Action Branch
2890 Woodbridge Avenue
Edison, New Jersey 08837
lopez.irmgard@epa.gov

As to Settling Party:

Adriana Ramirez-Martinez, General Counsel
Puerto Rico Industrial Development Company
355 Avenue Roosevelt
Hato Rey, Puerto Rico 00918
Adriana.Ramirez@pridco.pr.gov

XIII. INTEGRATION

36. This Settlement Agreement constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement Agreement.

XIV. PUBLIC COMMENT

37. This Settlement Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, EPA may modify or withdraw its consent to this Settlement

Agreement if comments received disclose facts or considerations which indicate that this Settlement Agreement is inappropriate, improper, or inadequate.

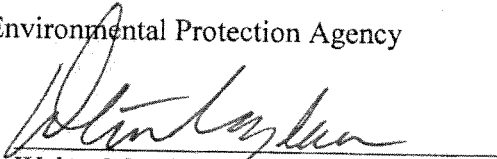
XV. EFFECTIVE DATE

38. The effective date of this Settlement Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 37 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Settlement Agreement

IT IS SO AGREED:

U.S. Environmental Protection Agency

By:



Walter Mugdan, Division Director
Emergency and Remedial Response Division
U.S. Environmental Protection Agency, Region 2

OCT. 15, 2012
[Date]

THE UNDERSIGNED SETTLING PARTY enters into this Settlement Agreement in the matter of CERCLA-02-2012-2021 for the Digital Equipment Corp. property, also known as the PCB Horizon Site located in the Bo Guama Industrial Park, San German, Puerto Rico.

FOR SETTLING PARTY:

[Name]

[Address]

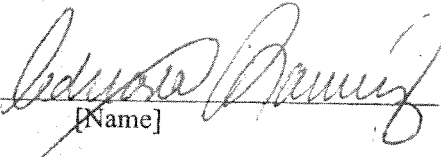
By:

[Name]

[Date]

THE UNDERSIGNED SETTLING PARTY enters into this Settlement Agreement in the matter of CERCLA-02-2012-2021 for the Digital Equipment Corp. property, also known as the PCB Horizon Site located in the Bo Guama Industrial Park, San German, Puerto Rico.

FOR SETTLING PARTY: Adriana B. Ramirez (Gen. Counsel)
[Name]
355 ave. FD Roosevelt 4th floor SJ PR 00918
[Address]

By: 
[Name] Feb. 28 2012
[Date]

